

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

GMAC MORTGAGE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 04-12448-GAO
)	
JEFFREY L. BAYKO, SR., et al.,)	
)	
Defendants.)	

UNITED STATES' REQUEST FOR
AN ADDITIONAL TWO DAYS TO RESPOND TO THE
COMMONWEALTH'S MOTION TO DISMISS¹

On December 21, 2004, the Commonwealth of Massachusetts filed and served a motion to dismiss the above-captioned proceeding on the grounds that “the Eleventh Amendment to the Constitution bars this action against the Commonwealth in this Court, and (2) the Commonwealth is an indispensable party to this case.” An extension was given to the United States to allow for the filing of this document on or before February 4, 2005. However, the United States is further refining the arguments made to the First Circuit Court of Appeals in Horizon Bank & Trust v. Flaherty, 309 F.Supp.2d 178 (D.Mass. 2004), *dismissed as moot*, 391 F.3d 98 (1st Cir. 2004), and requests an

¹ No memorandum is submitted in support of this request as it is not a motion. As provided by Rule 6(b)(1) of the Federal Rules of Civil Procedure, the district court has discretion to grant requests to enlarge time “without motion or notice before the expiration of the period.” (emphasis added) In contrast, Rule 6(b)(2) limits enlargements to the granting of motions made upon grounds of excusable neglect. Accordingly, here we are making a timely request under Rule 6(b)(1).

additional two days to complete the briefing and review process within the Department of Justice.²

Accordingly, the United States requests that this Court extend the time in which the United States may respond to the Commonwealth's motion to February 8, 2005.

Respectfully submitted,

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BARBARA HEALY SMITH
Assistant United States Attorney

/s/ Lydia Bottome Turanchik
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It is hereby certified that a copy of the above document has been served on each counsel of record, and each party appearing pro se, by First Class Mail on this 4th day of February, 2005.

/s/ Lydia Bottome Turanchik
LYDIA BOTTOME TURANCHIK

² Counsel for the United States left a voice mail message for counsel for the Commonwealth of Massachusetts, but it is believed that Ms. McAuliffe may be out of the office today as she has not returned this phone call.

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